

## REMARKS

The Office Action of January 12, 2006 has been noted and its contents carefully studied. At page 3 of the Office Action, it is stated that the Examiner considers 0.001 to 0.01% Rutin to be within the range of 0 to 15% Rutin specified by Ghosal et al. (US 6,362,167). Applicants maintain that the teachings of Ghosal et al., when considered as a whole, provide no motivation to use levels of Rutin within the range of 0.001 to 0.01% by weight of the composition. The reference teaches the use of 5-15% by weight of Rutin on column 4, line 40 of US 6,362,167 and on column 2, line 43 of US 6,124,268 (also by Ghosal et al.). However, the concentration of Rutin in claim 3 of US 6,362,167 recites 0-15%. One skilled in the art would interpret the use of up to 5% weight of Rutin to be equivalent to using none at all based on these combined teachings. These teachings provide no direction to select the range of 0.001 to 0.01% Rutin now claimed. To find the use of Rutin in this limited range to be obvious, one needs to assume that the infinite number of ranges within the generic range of 0-15% are obvious. This concept is contrary to the principles set forth in *In re Jones* 21 USPQ 2d 1941 (Fed. Cir. 1992), where the Federal Circuit rejected the contention that the “relative size of the genus disclosed by the prior art would not appear to be a controlling factor in determining whether a *prima facie* case of obviousness exists for a species encompassed within the described genus”. When the disclosure of Ghosal is considered as a whole, it would not be obvious to select the small narrow range of 0.001 to 0.01 wt % from the relatively broad ranges of 0-15wt% and 5 to 15wt%. Particularly since one skilled in the would assume the range of 0 to 15 wt% Rutin was intended to define compositions which were free of Rutin, not to define a composition with less than 5% weight of Rutin.

Currently, claims 1-4, 6, and 8-34 are pending with claims 5 and 7 canceled without prejudice or disclaimer. Claim 35 is allowed.

### Claim Amendments

Claims 1 has been amended to recite a process limitation to further define the product. Support for the claim amendment can be found in the application, as originally filed (for example, see page 4, 2<sup>nd</sup> paragraph; page 15, 2<sup>nd</sup> paragraph; and the “Procedure” section under Examples 1, 2, 3, 10, and 11). Dependent claims 4 and 6 have been amended for clarity. It is submitted that the

claim amendments do not add new matter.

### **Obviousness Type-Double Patenting Rejections**

Claims 1-34 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 5, 11-15, and 17-19 of Chaudhuri et al. (US 6,649,150).

Positive actions to address this rejection at this time would be premature, since no allowable subject matter is indicated amongst the product claims 1-34. If necessary, applicants will attend to this rejection after allowable matter is identified.

Applicants note however that the scope of claims 1, 5 11-15, and 17-19 of Chaudhuri et al. (US 6,649,150) do not overlap with the scope of the amended claim 1 herein. Inasmuch as claim 1 is amended by incorporating the process limitation to further define the product, the rejection is now moot. Accordingly, it is courteously requested that this rejection be withdrawn.

### **Rejection Under 35 U.S.C. § 103 (a)**

The rejection of claims 1-4, 6, and 8-34 under 35 U.S.C. § 103 (a) as being unpatentable over Ghosal et al. (US 6,362,167) or Chaudhuri et al. (US 6,649,150) in view of Vatter et al (US 6,475,600) is respectfully traversed.

Ghosal discloses a method of blocking free radical production by administering a formulation containing 0.005-5% by weight of a blended extract of *Emblica officinalis* (see col. 7, paragraph 1; and claim 1 of Ghosal et al). It is taught that the extract blend is isolated by treating the fruit pulp in dilute aqueous/alcoholic salt solution at 70 °C (col. 4, lines 20-30). Ghosal does not teach a method of formulating an antioxidant blend at temperature below 60 °C, which is necessary to prevent the decomposition of the antioxidants of the instant specification (see page 16, lines 11-14). Therefore, the compositions claimed are unobvious.

Additionally, as argued previously, there is nothing in the teachings of Ghosal which would motivate one of ordinary skill in the art to use the narrow and low ranges of the Rutin and other flavonoid antioxidants in a manner taught by the instant invention.

Vatter teaches an anhydrous cosmetic composition comprising cross-linked siloxane

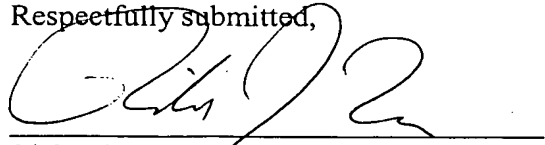
elastomers. Vatter discloses that *a pigment slurry of...mixed tocopherols* (an antioxidant) *are heated with mixing to a melt temperature of 90-115 °C* (see Example V of Vatter et al.). In subsequent Examples VI-VII and XI-XXVIII, it is taught that the components are blended at a melt temperature of 85-90 °C (see col. 28, lines 44-45; col. 29, lines 32-34; col. 33, lines 63-65; col. 35, lines 1-5). There is no hint or suggestion to mix the antioxidants disclosed in the instant specification at a temperature below 60 °C. Therefore the teachings of Vatter add nothing to the teachings of Ghosal which would lead to or suggest the compositions now claimed, which are formulated under conditions to prevent the decomposition of the antioxidants.

Furthermore, Vatter merely discloses that antioxidants such as tocopherol can be optionally added into the anhydrous composition. Vatter does not specifically disclose antioxidants derived from plant extracts. Applicants maintain that one cannot infer from the teachings of Vatter that the antioxidant blend of the instant invention would even be miscible with the anhydrous vehicle, let alone fulfill its antioxidant effects when combined with the vehicle at supra-low levels (less than 0.01% by weight).

Applicants also maintain that no motivation has been provided to combine the compounds of Ghosal with the anhydrous composition of Vatter in such a way as to arrive at the instant invention. The mere fact that these components could be combined to arrive at the claimed invention is insufficient. The prior art must convincingly suggest to one of ordinary skill in the art the desirability of combining the components. See *In re Laskowski*, 10 U.S.P.Q.2d 1397 (Fed. Cir. 1989). Neither Ghosal nor Vatter offer any suggestion which would motivate one of ordinary skill in the art to formulate the claimed antioxidant blend into an anhydrous composition in a multi-step formulation process that is presented in the instant application (see Examples 1-11, at pg. 16-23). Accordingly, it is respectfully requested that the rejection be withdrawn.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Traverso', is written over a horizontal line.

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Attorney Docket No.: EMIC-0054  
Date: May 10, 2006